



Stericycle®

Account/ Site # _____

STERI-SAFESM SERVICE AGREEMENT

Service Address
Name: Nutley Kidney Clinic
Address 1: 500 Cortland Street
Address 2: Suite #
City/State/Zip: Belleville, New Jersey 07109
E-Mail: bbalay2@verizon.net
Phone: (570) 994-3893 ext. Fax: (570) 994-3893
Contact: Babita Balay Title: Dir of Nursing

Billing Address (If Different)
Name: Same
Address 1:
Address 2: Suite #
City/State/Zip:
E-Mail:
Phone: () - ext. Fax: () -
Contact: Title:

The parties agree as follows:

1. The Effective date of this agreement is 1/1/2009.
2. Stericycle shall remove and dispose of Customer's Regulated Medical Waste (Hazardous Waste as applicable) subject to the terms and conditions set forth below.
3. Stericycle will provide additional compliance services for the prices applicable to the service program level Customer has selected below.

Services to be Provided

STERI-SAFE		* Additional Waste Services			
Steri-Safe Program Level <u>Preferred</u>		Category	Included w/ SS	Trans. Charge	\$/Cont
Payment Schedule: Billed <u>Monthly</u> at the rate of		Dental Waste	<input type="checkbox"/> YES	_____	_____
<u>\$1924</u> (Per Month)		Pharm	<input type="checkbox"/> YES	_____	_____
* Monthly payment schedule only available for selected programs with pickup frequency greater than 13 pickups per year.		Chemo/Path	<input type="checkbox"/> YES	_____	_____
Service Frequency <u>52 (Weekly)</u>		Medical Waste Container Size _____			
Additional Pick Up Charge <u>\$130.00</u> (For stops in addition to your regular schedule.)		Each Additional Container Charge \$ <u>35.00</u>			
Maximum Medical Waste Containers per Pickup <u>25</u>		* Not available in all areas.			
Medical Waste Container Size <u>Large</u>					
Each Additional Container Charge \$ <u>35.00</u>					

By signing below I acknowledge that I am the Customer's authorized officer or agent and that I have the authority to bind Customer to this Agreement. Customer agrees to be bound by the terms and conditions that appear on the second page hereof and comply with Stericycle's Waste Acceptance Policy, both of which are integral parts of this Agreement.

CUSTOMER: X Babita Balay PLEASE PRINT: BABITA BALAY Title: Director of Nursing Date: 11/13/08
 STERICYCLE: X Matt Walsh PLEASE PRINT: Matt Walsh Title: Director of Nursing Date: 11/13/08

Stericycle reserves the right to deal solely with the Customer and not with any third party agents of the customer for all purposes relating to this Agreement. Customer represents and warrants to Stericycle that it is the medical waste generator and is acting for its own account and not through a broker or agent. Stericycle shall be entitled to terminate this agreement and seek all available legal remedies, including but not limited to liquidated damages, in the amount set forth herein for Customer's breach of this representation and warranty.

STERICYCLE USE ONLY	
Type of Agreement <u>NEW</u> Term of agreement <u>60</u> Months	Promo Code _____
Tax Exempt: <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, ID# _____ (copy must accompany paperwork)	SFDC Record # <u>737034</u>
Purchase Order (if applicable) # _____ From <u>1/1</u> to <u>1/1</u>	EPA Gen ID# <u>0337025</u>
Segment Code <u>06</u> Affiliation Code _____	
Routing Information (Operations Department):	
Med Waste Container Code _____ Qty _____ Special Waste Container Code _____ Qty _____ None (sharps only) <input type="checkbox"/>	
Service Area _____ Route # _____ Container Setup Date <u>1/1/2005</u> First Pickup Date (Cycle Begin Date) <u>1/1/2005</u>	
Day of Service: <input type="checkbox"/> Mon <input type="checkbox"/> Tues <input type="checkbox"/> Wed <input type="checkbox"/> Thurs <input type="checkbox"/> Fri Service Hours _____	
Routing Comments _____	

Stericycle, Inc. • www.stericycle.com • 28161 N. Keith Drive, Lake Forest, IL 60045 • P (800) 355-8773 • F (847) 352-8475
 The offer will expire on: 11/15/2008

20-4120581

0337025
EPA ID

STERIS-SAFE™ TERMS AND CONDITIONS

Account/Site:

Initials: 

1. **Biomedical Waste Services** (a) Stericycle, Inc. shall collect, transport, treat and dispose of all Biomedical Waste generated by Customer during the term of this Agreement. "Biomedical Waste" means sharps, hypodermic needles, syringes, microbial cultures, tissue cultures, animal tissues or organs, animal carcasses, animal bedding, laboratory containers and slides that meet the definition of regulated medical waste under 29 CFR 1910.1030 or 49 CFR 173.134; infectious substances arising from the agents listed under 42 CFR 72.3; and discarded items which may have been contaminated by chemotherapy, cytotoxic, or antineoplastic drugs and/or agents, provided that such items, including vials and syringes, shall be "empty" as defined in applicable federal, state, county or municipal laws, regulations and guidelines. (b) "Non-Conforming Waste" means (i) any waste or other material not falling within the definition of Biomedical Waste; and, to the extent not covered by (i), (ii) fetal remains and human tissue; (iii) radioactive, reactive, corrosive, ignitable or toxic wastes and any and all other hazardous wastes and substances as defined in any applicable federal, state, county or municipal laws, regulations and guidelines; (iv) pharmaceutical materials (except as allowed under subsection (a) of this section or to the extent that Stericycle gives prior written approval and the pharmaceuticals are packaged according to instructions provided); (v) RCRA characteristic chemotherapy waste which has an alcohol base that makes the mixture ignitable, such as Voposid; and (vi) "Non-Conforming Waste" shall also include improperly classified and/or improperly packaged Biomedical Waste. Customer shall only place sharps in designated sharp containers. Stericycle may at its discretion refuse to collect containers that are improperly packaged or labeled, or that are wet or leaking, and in any event Customer shall be liable for all injuries, losses and damages that result from such containers. Title to Biomedical Waste collected from Customer shall transfer and vest in Stericycle at the time it is loaded into Stericycle's truck. Customer shall have title to Biomedical Waste at all prior times. Customer shall hold title to any Non-Conforming Waste at all times.
2. **Term and Pricing** Subject to the provisions below, the term ("Term") of this Agreement shall be 60 months from the Effective Date. (a) This Agreement shall continue on a month-to-month basis following the expiration of its initial term, and may be renewed by a renewal notice received from the customer at any time before or after the expiration of the initial term. (b) Stericycle reserves the right to adjust the contract price to account for operational changes it implements to comply with documented changes in law, to cover increases in the cost of fuel, insurance, or residue disposal, or to otherwise address cost escalation. Stericycle may charge Customer a fee to cover its administrative costs in the event that Customer changes its service requirements or program level during the Term or Extension Term. Stericycle may change the price of any of its goods or services not covered by this Agreement at any time without notice to Customer. (c) In the event Customer terminates this Agreement prior to expiration of the term hereof (or any "Extension Term") or fails to perform any of its obligations under this Agreement, Stericycle shall have, without limitation, all rights and remedies provided at law or in equity, as well as the right to recover from Customer an amount (which the parties hereby acknowledge constitutes Stericycle's liquidated damages and not a penalty) equal to fifty percent of the Customer's average monthly charge multiplied by the number of months (including any partial months), remaining until the expiration date of the then current term hereof. (d) Stericycle shall have the right to terminate this Agreement at any time by giving Customer at least sixty (60) days notice in the event that it is unable to continue performing its obligations under this Agreement due to the suspension, revocation, cancellation or termination of any permit required to perform this Agreement or in the event that a change in any law or regulation makes it impractical or uneconomical, in Stericycle's sole discretion, to continue performing this Agreement.
3. **Billing** Stericycle shall provide Customer with monthly, quarterly or annual invoices that are due upon receipt. Customer agrees to pay a late charge on any amounts owed to Stericycle that are more than 30 days old, at a rate equal to the lesser of 1 1/2% per month or the maximum rate permitted by law. Customer shall bear any costs that Stericycle may incur in collecting overdue amounts from Customer, including, but not limited to, reasonable attorneys' fees and court costs. Should any amounts due pursuant to this Agreement remain unpaid for more than 30 days from the date of the debt's first invoice, Stericycle shall have the option, without notice to Customer, to suspend service under this Agreement until the overdue amounts (plus late charges and collection fees) are paid. In the event that Stericycle suspends services under this Agreement for any reason, including the expiration or termination of this Agreement or Customer's breach (see 2(c), above), Stericycle may remove all containers belonging to it from Customer's premises. Any non-compliant containers will be billed an additional container charge at the current container rate. Non-compliant containers include containers that are overweight under applicable laws or regulations or in excess of 60 pounds or containers holding Non-Conforming Waste, (including hazardous or radioactive waste or improperly packaged or labeled medical waste.)
4. **Surcharge** Stericycle may also impose a surcharge in the event that Stericycle attempts to pick up waste at a Customer location (on either a scheduled pick-up or in response to a Customer request) and, through no fault of Stericycle, either (a) there is no Biomedical Waste for Stericycle to pick up, (b) waste is not ready for pick-up or (c) the Customer location is closed. Excess waste volumes significantly greater than average volume for similar generators shall be subject to a surcharge at the current surcharge container rate (\$35.00) at Stericycle's discretion. Stericycle will impose this surcharge to deter abuses, including but not limited to, solid waste disposed in the medical waste stream, or Customer consolidation of the waste of several generators under one site.
5. **Liability for Equipment** Customer shall have the care, custody and control of containers and other equipment owned by Stericycle and placed at Customer's premises and accepts responsibility and liability for the equipment and its contents except when it is being physically handled by employees of Stericycle. Customer agrees to defend, indemnify and hold harmless Stericycle from and against any and all claims for loss or damage to property, or personal injury or death, resulting from or arising in any manner out of Customer's use, operation or possession of any containers and other equipment furnished under this Agreement. Any damage or loss to such containers and equipment, other than normal wear and tear, will be charged to Customer at full replacement value.
6. **Indemnification** (a) Stericycle shall indemnify and hold Customer harmless from any liabilities arising from the gross negligence or willful misconduct of Stericycle in the performance of its obligations under this Agreement. Customer shall indemnify and hold harmless Stericycle from any liabilities arising from any liabilities arising from the gross negligence or willful misconduct of Customer, which shall include, but not be limited to, failure to properly store, package, label, or segregate Biomedical Waste and any liabilities relating to Non-Conforming Waste, whether or not collected, transported or treated by Stericycle. Each party agrees to pay the reasonable attorneys' fees and costs incurred by the other in bringing a successful indemnification claim under this Paragraph. Customer agrees to pay Stericycle's reasonable attorney's fees incurred for any successful defense by Stericycle of a suit for indemnification brought against Stericycle by Customer. (b) Stericycle will indemnify and hold harmless any Customer who subscribes to a Preferred Program from any fine or portion thereof resulting from an OSHA citation explicitly describing a blood-borne pathogen or medical waste management practice specifically addressed by the Preferred Program training and materials. Provided, however, that Stericycle's obligation to indemnify Customer under this sub-Paragraph (b) is contingent upon (1) Customer having followed or following each recommendation and instruction included in the Preferred Program (whether expressed verbally by employees or agents of Stericycle or as set forth in any written or electronic materials) and (2) Customer notifying Stericycle as soon as possible after it learns that it will be the subject of an OSHA inspection, and shall allow employees or agents of Stericycle to attend the inspection and to defend the Customer's blood-borne pathogen and medical waste management practices during the inspection. Customer's failure to perform any of its obligations under this sub-Paragraph (b) to Stericycle's satisfaction shall absolve Stericycle of its indemnification responsibilities under this sub-Paragraph (b). This sub-Paragraph (b) applies only to the Preferred Level Program.
7. **Compliance Materials** To the extent that Stericycle provides Customer with any electronic or printed materials (the "Compliance Materials") it provides these materials subject to a limited license to Customer to use the Compliance Materials for Customer's own, non-commercial use. Stericycle may revoke this license at its discretion at any time. Customer may not copy or distribute the Compliance Materials in any manner. Customer agrees to return all Compliance Materials to Stericycle at Customer's expense at the expiration or termination of this Agreement. Stericycle may charge Customer a fee for failure to return Compliance Materials at the expiration of the Term or a restocking fee for return of materials prior to the expiration of the Term.
8. **Compliance with Laws** Stericycle hereby agrees to carry General Liability, Automobile Liability, and Workmen's Compensation Insurance as required by applicable state law, and to otherwise comply with all federal and state laws, rules and regulations applicable to its performance hereunder. As of the date of this Agreement, Stericycle has all necessary permits, licenses, zoning and other federal, state or local authorizations required to perform the services under this Agreement and will furnish copies of these to Customer upon request. Customer hereby agrees to comply with all federal and state laws, rules and regulations applicable to its handling of Biomedical Waste and its performance under this Agreement, including, without limitation, all applicable record keeping, documentation and manifesting requirements. Stericycle and Customer shall keep and retain adequate books and records and other documentation including personnel records, correspondence, instructions, plans, receipts, vouchers, copies of manifests and tracking records consistent with and for the periods required by applicable regulations and guidelines pertaining to storage or handling of Biomedical Waste and the services to be performed under this Agreement.
9. **Exclusivity** Customer agrees to use no other Biomedical Waste disposal service during the Term of this Agreement and any Extension Terms.
10. **Excuse of Performance** Stericycle shall not be responsible if its performance of this Agreement is interrupted or delayed by contingencies beyond its control, including, without limitation, acts of God, war, blockades, riots, explosion, strikes, lockouts or other labor or industrial disturbances, fires, accidents to equipment, injunctions or compliance with laws, regulations, guidelines or orders of any governmental body or instrumentality thereof (whether now existing or hereafter created).
11. **Independent Contractor** Stericycle's relationship with Customer pursuant hereto is that of an independent contractor, and nothing in this Agreement shall be construed to designate Stericycle as an employee, agent or partner of or a joint venture with Customer.
12. **Amendment and Waiver** Changes in the type, size and amount of equipment or the frequency of service may be mutually agreed to orally or in writing by the parties, without affecting the validity of this Agreement. Consent to oral changes shall be evidenced by the practices and actions of the parties. All other amendments to this Agreement (other than as provided in 2(b)) shall be effected only by a written instrument executed by the parties. No waiver shall be effective unless submitted in writing by the party granting such waiver. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement and no waiver of any breach or duty under this Agreement shall be deemed a waiver of any other breach or later instances of the same duty.
13. **Savings Clause** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement; this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless such finding shall impair the rights or increase the obligations of Stericycle hereunder. In which event, at Stericycle's option, this Agreement may be terminated.
14. **Entire Agreement** This Agreement (including any attachments, exhibits and amendments made in accordance with Paragraph 12) constitutes the entire understanding and agreement of the parties and cancels and supercedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns legal representatives and heirs of the parties hereto provided, however, that Customer may not assign its rights or delegate its obligations under this Agreement without the prior written consent of Stericycle, which consent of Stericycle may not unreasonably be withheld.
15. **Governing Law** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to the conflicts of laws or rules of any jurisdiction.
16. **Notices** All required notices, or those which the parties may desire to give under this Agreement shall be in writing and sent to the parties' addresses set forth above.
17. **Originals** A copy of this Agreement shall be as effective as an original.

**Stericycle®**

Account/ Site # _____

STERI-SAFESM SERVICE AGREEMENT

Name: Service Address
Address 1: Nutley Kidney Clinic
Address 2: Suite #
City/State/Zip: Belleville, New Jersey 07109
E-Mail: bbalay2@verizon.net
Phone: (570) 994-3893 ext. **Fax:** (570) 994-3893
Contact: Babita Balay **Title:** Dir of Nursing

Name: Billing Address (If Different)
Address 1: Same
Address 2: Suite #
City/State/Zip: _____
E-Mail: _____
Phone: () - ext. **Fax:** () -
Contact: _____ **Title:** _____

The parties agree as follows:

1. The Effective date of this agreement is 1/1/2009.
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3. Stericycle will provide additional compliance services for the prices applicable to the service program level Customer has selected below.

Services to be Provided

STERI-SAFE		*Additional Waste Services	
Steri-Safe Program Level <u>Preferred</u>		Category	Included w/ SS
Payment Schedule: <u>Billed Monthly</u> at the rate of		Dental Waste	<input type="checkbox"/> YES
<u>\$1924 (Per Month)</u>		Pharm	<input type="checkbox"/> YES
* Monthly payment schedule only available for selected programs with pickup frequency greater than 13 pickups per year.		Chemo/Path	<input type="checkbox"/> YES
Service Frequency	<u>52 (Weekly)</u>	Medical Waste Container Size	_____
Additional Pick Up Charge	<u>\$130.00</u>	Each Additional Container Charge	<u>\$ 35.00</u>
(For stops in addition to your regular schedule.)		* Not available in all areas.	
Maximum Medical Waste Containers per Pickup	<u>25</u>		
Medical Waste Container Size	<u>Large</u>		
Each Additional Container Charge	<u>\$ 35.00</u>		

By signing below I acknowledge that I am the Customer's authorized officer or agent and that I have the authority to bind Customer to this Agreement. Customer agrees to be bound by the terms and conditions that appear on the second page hereof and comply with Stericycle's Waste Acceptance Policy, both of which are integral parts of this Agreement.

CUSTOMER: X Babita Balay **PLEASE PRINT:** BABITA BALAY **Title:** Director of Nursing **Date:** 11/13/08
STERICYCLE: X **PLEASE PRINT:** _____ **Title:** _____ **Date:** _____

Stericycle reserves the right to deal solely with the Customer and not with any third party agents of the customer for all purposes relating to this Agreement. Customer represents and warrants to Stericycle that it is the medical waste generator and is acting for its own account and not through a broker or agent. Stericycle shall be entitled to terminate this agreement and seek all available legal remedies, including but not limited to liquidated damages, in the amount set forth herein for Customer's breach of this representation and warranty.

STERICYCLE USE ONLYType of Agreement New Term of agreement 60 MonthsTax Exempt: ☐ YES ☐ NO If YES, ID# _____ (copy must accompany paperwork)

Purchase Order (if applicable) # _____ From ____/____/____ to ____/____/____

Segment Code 06 Affiliation Code _____**Routing Information (Operations Department):**Med Waste Container Code _____ Qty _____ Special Waste Container Code _____ Qty _____ None (sharps only) ☐

Service Area _____ Route # _____ Container Setup Date ____/____/2005 First Pickup Date (Cycle Begin Date) ____/____/2005

Day of Service: ☐ Mon ☐ Tues ☐ Wed ☐ Thurs ☐ Fri Service Hours _____

Routing Comments _____

Promo Code _____

SFDC Record # _____

EPA Gen ID# _____

Stericycle, Inc. • www.stericycle.com • 28161 N. Keith Drive, Lake Forest, IL 60045 • P (800) 355-8773 • F (847) 367-9475

The offer Will Expire on: 11/15/2008

Nutley Kidney Clinic L.L.C

500 Cortlandt Street

Belleville, NJ 07109

570-994-3893 (Phone)

570-476-4447 (Fax)

Rene Gammard
647 943
6568

FAX:

To: Matthew J Walsh

From: Babita Balay

Fax: 1800 782 4214

Pages 3

Buss:

Date: 11/13/08

Re: Steri. Safe Service Agreement

Please fax a copy after you have signed.
Thank you.

STERI-SAFESM TERMS AND CONDITIONS

Account/Site

Initials 

- 1. Biomedical Waste Services** (a) Stericycle, Inc. shall collect, transport, treat and dispose of all Biomedical Waste generated by Customer during the term of this Agreement. "Biomedical Waste" means sharps, hypodermic needles, syringes, microbial cultures, tissue cultures, animal tissues or organs, animal carcasses, animal bedding, laboratory containers and slides that meet the definition of regulated medical waste under 29 CFR 1910.1030 or 49 CFR 173.134; infectious substances arising from the agents listed under 42 CFR 72.3; and discarded items which may have been contaminated by therapeutic, cytotoxic, or antineoplastic drugs and/or agents, provided that such items, including vials and syringes, shall be "empty" as defined in applicable federal, state, county or municipal regulations and guidelines. (b) "Non-Conforming Waste" means (i) any waste or other material not falling within the definition of Biomedical Waste; and, to the extent not covered by (i), (ii) fetal remains and human torsos; (iii) radioactive, reactive, corrosive, ignitable or toxic wastes and any and all other hazardous wastes and substances as defined in any applicable federal, state, county or municipal laws, regulations and guidelines; (iv) pharmaceutical materials (except as allowed under subsection (a) of this section or to the extent that Stericycle gives prior written approval and the pharmaceuticals are packaged according to instructions provided); (v) RCRA characteristic chemotherapy waste which has an alcohol base that makes the mixture ignitable, such as Vespid; and (vi) Chlorambucil, Cyclophosphamide, Daunomycin, Melphalan, Mitomycin C, Streptozotocin, and Uracil Mustard (which are listed RCRA Hazardous Wastes and must be managed as such). "Non-Conforming Waste" shall also include improperly classified and/or improperly packaged Biomedical Waste. Customer shall only place sharps in designated sharp containers. Stericycle may at its discretion refuse to collect containers that are improperly packaged or labeled, or that are wet or leaking, and in any event Customer shall be liable for all injuries, losses and damages that result from such containers. Title to Biomedical Waste collected from Customer shall transfer and vest in Stericycle at the time it is loaded into Stericycle's truck. Customer shall have title to Biomedical Waste at all prior times. Customer shall hold title to any Non-Conforming Waste at all times.
- 2. Term and Pricing** Subject to the provisions below, the term ("Term") of this Agreement shall be 60 months from the Effective Date. (a) ~~This Agreement shall continue on a month-to-month basis following the expiration of its initial term, and may be renewed by a renewal notice received from the customer at any time before or after the expiration of the initial term.~~ (b) Stericycle reserves the right to adjust the contract price to account for operational changes it implements to comply with documented changes in law, to cover increases in the cost of fuel, insurance, or residue disposal, or to otherwise address cost escalation. Stericycle may charge Customer a fee to cover its administrative costs in the event that Customer changes its service requirements or program level during the Term or Extension Term. Stericycle may change the price of any of its goods or services not covered by this Agreement at any time without notice to Customer. (c) In the event Customer terminates this Agreement prior to expiration of the term hereof (or any "Extension Term") or fails to perform any of its obligations under this Agreement, Stericycle shall have, without limitation, all rights and remedies provided at law or in equity, as well as the right to recover from Customer an amount (which the parties hereby acknowledge constitutes Stericycle's liquidated damages and not a penalty) equal to fifty percent of the Customer's average monthly charge multiplied by the number of months (including any partial months), remaining until the expiration date of the then current term hereof. (d) Stericycle shall have the right to terminate this Agreement at any time by giving Customer at least sixty (60) days notice in the event that it is unable to continue performing its obligations under this Agreement due to the suspension, revocation, cancellation or termination of any permit required to perform this Agreement or in the event that a change in any law or regulation makes it impractical or uneconomical, in Stericycle's sole discretion, to continue performing this Agreement.
- 3. Billing** Stericycle shall provide Customer with monthly, quarterly or annual invoices that are due upon receipt. Customer agrees to pay a late charge on any amounts owed to Stericycle that are more than 30 days old, at a rate equal to the lesser of 1 1/2% per month or the maximum rate permitted by law. Customer shall bear any costs that Stericycle may incur in collecting overdue amounts from Customer, including, but not limited to, reasonable attorneys' fees and court costs. Should any amounts due pursuant to this Agreement remain unpaid for more than 30 days from the date of the debt's first invoice, Stericycle shall have the option, without notice to Customer, to suspend service under this Agreement until the overdue amounts (plus late charges and collection fees) are paid. In the event that Stericycle suspends services under this Agreement for any reason, including the expiration or termination of this Agreement or Customer's breach (see 2(c), above), Stericycle may remove all containers belonging to it from Customer's premises. Any non-compliant containers will be billed an additional container charge at the current container rate. Non-compliant containers include containers that are overweight under applicable laws or regulations or in excess of 60 pounds or containers holding Non-Conforming Waste, (including hazardous or radioactive waste or improperly packaged or labeled medical waste.)
- 4. Surcharge** Stericycle may also impose a surcharge in the event that Stericycle attempts to pick up waste at a Customer location (on either a scheduled pick-up or in response to a Customer request) and, through no fault of Stericycle, either (a) there is no Biomedical Waste for Stericycle to pick up, (b) waste is not ready for pick-up or (c) the Customer location is closed. Excess waste volumes significantly greater than average volume for similar generators shall be subject to a surcharge at the current surcharge container rate (\$35.00) at Stericycle's discretion. Stericycle will impose this surcharge to deter abuses, including but not limited to, solid waste disposed in the medical waste stream, or Customer consolidation of the waste of several generators under one site.
- 5. Liability for Equipment** Customer shall have the care, custody and control of containers and other equipment owned by Stericycle and placed at Customer's premises and accepts responsibility and liability for the equipment and its contents except when it is being physically handled by employees of Stericycle. Customer agrees to defend, indemnify and hold harmless Stericycle from and against any and all claims for loss or damage to property, or personal injury or death, resulting from or arising in any manner out of Customer's use, operation or possession of any containers and other equipment furnished under this Agreement. Any damage or loss to such containers and equipment, other than normal wear and tear, will be charged to Customer at full replacement value.
- 6. Indemnification** (a) Stericycle shall indemnify and hold Customer harmless from any liabilities arising from the gross negligence or willful misconduct of Stericycle in the performance of its duties under this Agreement. Customer shall indemnify and hold harmless Stericycle from any liabilities arising from the gross negligence or willful misconduct of Customer, which shall include, but not be limited to, failure to properly store, package, label, or segregate Biomedical Waste and any liabilities relating to Non-Conforming Waste, whether or not collected, transported or treated by Stericycle. Each party agrees to pay the reasonable attorneys' fees and costs incurred by the other in bringing a successful indemnification claim under this Paragraph. Customer agrees to pay Stericycle's reasonable attorney's fees incurred for any successful defense by Stericycle of a suit for indemnification brought against Stericycle by Customer. (b) Stericycle will indemnify and hold harmless any Customer who subscribes to a Preferred Program from any fine or portion thereof resulting from an OSHA citation explicitly describing a blood-borne pathogen or medical waste management practice specifically addressed by the Preferred Program training and materials. Provided, however, that Stericycle's obligation to indemnify Customer under this sub-Paragraph (b) is contingent upon (1) Customer having followed or following each recommendation and instruction included in the Preferred Program (whether expressed verbally by employees or agents of Stericycle or as set forth in any written or electronic materials) and (2) Customer notifying Stericycle as soon as possible after it learns that it will be the subject of an OSHA inspection, and shall allow employees or agents of Stericycle to attend the inspection and to defend the Customer's blood-borne pathogen and medical waste management practices during the inspection. Customer's failure to perform any of its obligations under this sub-Paragraph (b) to Stericycle's satisfaction shall absolve Stericycle of its indemnification responsibilities under this sub-Paragraph (b). This sub-Paragraph (b) applies only to the Preferred Level Program.
- 7. Compliance Materials** To the extent that Stericycle provides Customer with any electronic or printed materials (the "Compliance Materials") it provides these materials subject to a limited license to Customer to use the Compliance Materials for Customer's own, non-commercial use. Stericycle may revoke this license at its discretion at any time. Customer may not copy or distribute the Compliance Materials in any manner. Customer agrees to return all Compliance Materials to Stericycle at Customer's expense at the expiration or termination of this Agreement. Stericycle may charge Customer a fee for failure to return Compliance Materials at the expiration of the Term or a restocking fee for return of materials prior to the expiration of the Term.
- 8. Compliance with Laws** Stericycle hereby agrees to carry General Liability, Automobile Liability, and Workmen's Compensation Insurance as required by applicable state law, and to otherwise comply with all federal and state laws, rules and regulations applicable to its performance hereunder. As of the date of this Agreement, Stericycle has all necessary permits, licenses, zoning and other federal, state or local authorizations required to perform the services under this Agreement and will furnish copies of these to Customer upon request. Customer hereby agrees to comply with all federal and state laws, rules and regulations applicable to its handling of Biomedical Waste and its performance under this Agreement, including, without limitation, all applicable record keeping, documentation and manifesting requirements. Stericycle and Customer shall keep and retain adequate books and records and other documentation including personnel records, correspondence, instructions, plans, receipts, vouchers, copies of manifests and tracking records consistent with and for the periods required by applicable regulations and guidelines pertaining to storage or handling of Biomedical Waste and the services to be performed under this Agreement.
- 9. Exclusivity** Customer agrees to use no other Biomedical Waste disposal service during the Term of this Agreement and any Extension Terms.
- 10. Excuse of Performance** Stericycle shall not be responsible if its performance of this Agreement is interrupted or delayed by contingencies beyond its control, including, without limitation, acts of God, war, blockades, riots, explosion, strikes, lockouts or other labor or industrial disturbances, fires, accidents to equipment, injunctions or compliance with laws, regulations, guidelines or orders of any governmental body or instrumentality thereof (whether now existing or hereafter created).
- 11. Independent Contractor** Stericycle's relationship with Customer pursuant hereto is that of an independent contractor, and nothing in this Agreement shall be construed to designate Stericycle as an employee, agent or partner of or a joint venture with Customer.
- 12. Amendment and Waiver** Changes in the types, size and amount of equipment or the frequency of service may be mutually agreed to orally or in writing by the parties, without affecting the validity of this Agreement. Consent to oral changes shall be evidenced by the practices and actions of the parties. All other amendments to this Agreement (other than as provided in 2(b)) shall be effected only by a written instrument executed by the parties. No waiver shall be effective unless submitted in writing by the party granting such waiver. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement and no waiver of any breach or duty under this Agreement shall be deemed a waiver of any other breach or later instances of the same duty.
- 13. Savings Clause** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provisions of this Agreement; this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless such finding shall impair the rights or increase the obligations of Stericycle hereunder, in which event, at Stericycle's option, this Agreement may be terminated.
- 14. Entire Agreement** This Agreement (including any attachments, exhibits and amendments made in accordance with Paragraph 12) constitutes the entire understanding and agreement of the parties and cancels and supercedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns legal representatives and heirs of the parties hereto provided, however, that Customer may not assign its rights or delegate its duties under this Agreement without the prior written consent of Stericycle, which consent of Stericycle may not unreasonably withhold.
- 15. Governing Law** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to the conflicts of laws or rules of any jurisdiction.
- 16. Notices** All required notices, or those which the parties may desire to give under this Agreement shall be in writing and sent to the parties' addresses set forth above.
- 17. Originals** A copy or facsimile of this Agreement shall be as effective as an original.